

FILED  
03 APR 10 AM 10:45

99b  
DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DO KHA,  
CDCR #V-25745,

Plaintiff,

vs.

DONNA POST, et al.

Defendants.

Civil No. 08-0591 W (JMA)

**ORDER TRANSFERRING CIVIL  
ACTION FOR LACK OF PROPER  
VENUE TO THE EASTERN  
DISTRICT OF CALIFORNIA  
PURSUANT TO 28 U.S.C. § 84(b),  
28 U.S.C. § 1391(b) AND  
28 U.S.C. § 1406(a)**

Plaintiff, an inmate currently incarcerated at Wasco State Prison located in Wasco, California, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff did not prepay the \$350 civil filing fee mandated by 28 U.S.C. § 1914(a); instead he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).

**I. Lack of Proper Venue**

Upon initial review of the Complaint, the Court finds that Plaintiff's case lacks proper venue. Venue may be raised by a court sua sponte where the defendant has not yet filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986). "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in

1 which a substantial part of the events or omissions giving rise to the claim occurred, or a  
 2 substantial part of property that is the subject of the action is situated, or (3) a judicial district  
 3 in which any defendant may be found, if there is no district in which the action may otherwise  
 4 be brought.” 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v.*  
 5 *Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a district  
 6 in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in  
 7 the interests of justice, transfer such case to any district in or division in which it could have  
 8 been brought.” 28 U.S.C. § 1406(a).

9 Here, Plaintiff claims constitutional violations originally arising out of events which  
 10 occurred at Wasco State Prison which is located in Kern County. *See* Compl. at 1. No claim  
 11 is alleged to have arisen in San Diego or Imperial Counties, and all Defendants are alleged to  
 12 reside in Kern County. *Id.* at 2. Therefore, venue is proper in the Eastern District of California  
 13 pursuant to 28 U.S.C. § 84(b), not in the Southern District of California. *See* 28 U.S.C.  
 14 § 1391(b); *Costlow*, 790 F.2d at 1488.

## 15 II. Conclusion and Order

16 Accordingly, **IT IS HEREBY ORDERED** that the Clerk of the Court shall transfer this  
 17 case for lack of proper venue, in the interests of justice and for the convenience of all parties,  
 18 to the docket of the United States District Court for the Eastern District of California  
 19 pursuant to 28 U.S.C. § 84(b), 28 U.S.C. § 1391(b) and 28 U.S.C. § 1406(a).<sup>1</sup>

21 DATED: 4/9/08

  
 22 HON. THOMAS J. WHELAN  
 23 United States District Judge  
 24

25 <sup>1</sup> Because the Court finds transfer appropriate, it defers ruling on Plaintiff’s Motion to Proceed  
 26 IFP [Doc. No. 2] to the Eastern District, and expresses no opinion as to whether Plaintiff’s Complaint  
 27 alleges facts sufficient to survive the mandatory sua sponte screening provisions of 28 U.S.C.  
 28 §§ 1915(e)(2) and 1915A(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (28  
 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss an *in forma pauperis*  
 complaint that fails to state a claim); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (sua sponte  
 screening provisions of 28 U.S.C. § 1915A(b)(1) & (2) require court to dismiss complaints filed by  
 prisoners which are frivolous, malicious, fail to state a claim or seeking damages from immune  
 defendants).